

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 1, SUBREGION 34

BOB'S TIRE CO., INC., AND  
B.J.S SERVICE COMPANY, INC.  
and

UNITED FOOD AND COMMERCIAL  
WORKERS INTERNATIONAL UNION,  
LOCAL 328

Cases:	01-CA-169949
	01-CA-169956
	01-CA-169959
	01-CA-169968
	01-CA-173156
	01-CA-183476
	01-CA-183482
	01-CA-186451
	01-CA-186462

B.J.S SERVICE COMPANY, INC.'S REPLY TO GENERAL COUNSEL'S  
(SECOND) OPPOSITION TO RESPONDENT B.J.S SERVICE COMPANY, INC.'S  
MOTION TO DISMISS

General Counsel served a second Opposition to the Motion to Dismiss by Respondent B.J.s Service Company, Inc. ("BJs") on May 25, 2017. Pursuant to Section 102.24(c) of the National Labor Relations Board's ("Board") Rules and Regulations, "[a] party that has filed a motion may file a reply to an opposition to its motion within 7 days of receipt of the opposition".

Both General Counsel's first and second oppositions fail to provide any opposition to the caselaw BJs cited in support of its motion to dismiss that BJs may only be liable for its own actions - not for the actions of Bob's Tire Co., Inc. ("Bob's").

The primary assertion of BJs' motion still stands unopposed: "a finding that two companies are an employee's 'joint employers' only affects each employer's liability to the employee for their own actions, not for each other's actions." Torres-Negron v. Merck & Co., 488 F.3d 34, 40 n. 6 (1<sup>st</sup> Cir. 2007))

It is not enough for General Counsel to allege BJs and Bob's were joint employers. General Counsel failed to meet its burden to oppose, contest and/or refute that "joint-employer

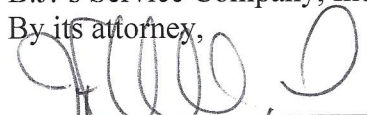
liability does not by itself implicate vicarious liability.” Torres-Negron, 488 F.3d at 40 n. 6  
(emphasis added)

Regardless of the question of joint employer status, BJs may not be held liable because BJs: had no involvement in Bob’s actions or decisions, had no authority to override Bob’s decisions, and exercised no control over Bob’s actions. Torres-Negron, *Supra*; Llampallas v. Mini-Circuits, Lab, Inc., 163 F.3d 1236, 1244-45 (11th Cir. 1998); Whitaker v. Milwaukee County, 772 F.3d 802, 803 (7th Cir. 2014); *See* Lima v. Adecco, 375 Fed. App’x. 54 (2d Cir. 2010); *See* AT&T v. NLRB, 67 F.3d 446, 451 (2d Cir.1995); *See also* Sandoval v. City of Boulder, 388 F.3d 1312, 1324, n.4 (10th Cir. 2004); *See also*. Punt v. Kelly Service, No. 14cv2560, 2016 WL 67654, at \*14 (D. Colo. Jan. 6, 2016).

Pursuant to Section 102.24(b) of the Board’s Rules and Regulations, BJs’ Motion to Dismiss the Amended Complaint must be entered by the Board because General Counsel failed to oppose and thereby conceded that BJs may not be held liable for the actions of Bob’s and dismissal must be entered.

**WHEREFORE**, BJs respectfully requests the Amended Complaint be dismissed as to BJs with prejudice forthwith.

Respectfully submitted,  
B.J.’s Service Company, Inc.  
By its attorney,



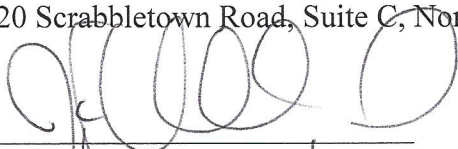
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Dated: May 26, 2017

## AFFIDAVIT OF SERVICE

The undersigned, an attorney admitted to practice before the Courts of the Commonwealth of Massachusetts, affirms under penalty of perjury, that, on the 24<sup>th</sup> day of May 2017, he filed via NLRB E-File the above B.J.s Service Company, Inc.'s Reply to General Counsel's Reply and Opposition to BJs Motion to Dismiss, and to the Executive Secretary of the Board and by electronic mail and first class mail, postage prepaid to and upon: John J. Walsh, Jr., Regional Director, National Labors Relations Board Region 01, A.A. Ribicoff Federal Building, Suite 410, 450 Main Street, Hartford, CT 06103; Rick Concepcion, Esq., Field Attorney, National Labors Relations Board Subregion 34, A.A. Ribicoff Federal Building, Suite 410, 450 Main Street, Hartford, CT 06103; Gregory Koldys, Esq., 449A Faunce Corner Road, Dartmouth, MA 02747; and Marc Gursky, Esq., Gursky/Wiens, 420 Scrabbletown Road, Suite C, North Kingston, RI 02852.

Date: May 26, 2017

  
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John F. Whiteside, Jr.